PA/FOIA INTERFACE

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The Statutes

Privacy Act

- Codified at 5 U.S.C. 552a.
- Passed in 1974, became effective September 25, 1975.
- Act passed in haste as an outgrowth of Watergate reforms and the growing use of computers.

Freedom of Information Act

- Codified at 5 U.S.C. 552.
- Passed in 1966, became effective July 4, 1967.
- Act passed after protracted legislative efforts, including a decade of hearings.

Policy Objectives

Privacy Act

- Restricts disclosure of personally identifiable records.
- Grants individuals an increased right of access to records about them.
- Allows individuals the right to amend records that are not accurate
- Establishes a code of fair information practices.

Freedom of Information Act

- Ensures an informed citizenry.
- Opens government activity to public scrutiny.

Records

Privacy Act

- Any item, collection or grouping of information about an individual that is maintained by an agency in a "system of records."

Freedom of Information Act

- Records are either
  1. Created or maintained by the agency, and/or
  2. Under agency control.

**No requirement to create records that do not exist under either st

Access Provisions

Privacy Act

- Only to the subject of the record or appropriate designee.
- Apply only to U.S. citizens and aliens lawfully admitted for permanent residence.
- Access may also be granted through “exceptions” (includes a published “routine use).”

Freedom of Information Act

- “Any person” can gain access to non-exempt records.

Exercise

- Under which Act would you process these requests?
  - A request from an individual who wants access to his own personnel file.
  - A request from a company seeking access to a copy of the winning contract for IT support services.
  - A request from an individual seeking access to the arrest record of her neighbor.

Conducting a Search

Privacy Act

- Search is limited to records contained in a system of record maintained by the agency.
- Unless you have reason to believe that records exist in non-Privacy Act files.

Freedom of Information Act

- Reasonable search of all records created or maintained by the agency, including those in Privacy Act systems of records.

Processing Time Limits

Privacy Act

- Statute does not specify processing time limit.
- Processing times are defined by agency regulation.
- DoD processing time is 20 days.

Freedom of Information Act

- Processing times outlined in statute.
- 20 working days
- 10 additional days in exceptional circumstances.

Appeal Rights

Privacy Act

- Denial of access.
- Denial of amendment.
- Process established by regulation not statute.

Freedom of Information Act

- Adequacy of search.
- Failure to comply with time limits.
- Denial of information in full or part pursuant to an exemption.
- Denial of fee waiver or expedited processing.
- Process included in statute and implementing regulation.

Fees

Privacy Act

- Fees limited to duplication costs.
- Costs outlined in implementing regulations.

Freedom of Information Act

- Uniform fee schedule prescribed by OMB.
- Sets search, review and duplication costs based on identity of the requester.
- Provision for fee waivers
- Must resolve fee matters prior to processing.

Exemptions

Privacy Act

- (k)(1) Exempts properly classified information.
- (j)(1) CIA

Freedom of Information Act

- (b)(1) exempts from disclosure information properly classified pursuant to prevailing executive order on classification.
- (b)(3) information exempt from disclosure by statute.

Exemptions

Privacy Act

- (j)(2) and (k)(2) exempt investigative material compiled for law enforcement purposes.
- (k)(3) exempts information related to the protection of the President.
- (k)(4) used solely as a statistical record.

Freedom of Information Act

- (b)(7)(A) – (b)(7)(F) exempt records compiled for law enforcement purposes.
- (b)(3) information exempted from disclosure by statute.
- No comparable exemption.

Exemptions

Privacy Act

- (k)(5) exempts investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal Civilian employment, military service, Federal contracts or access to classified information but only to the extent that disclosure of such material would reveal the identity of a confidential source.

Freedom of Information Act

- (b)(6) unwarranted invasion of personal privacy.

Exemptions

Privacy Act

- (k)(6) exempts testing and evaluation materials.
- (k)(7) exempts evaluation materials (provided by a confidential source).

Freedom of Information Act

- (b)(2) high exempts internal personnel rules and practices.
- (b)(5) exempts deliberative information and
- (b)(7)(D) exempts information related to confidential sources.

Exemptions

Privacy Act

- No similar exemption.
- (d)(5) exempts information compiled in reasonable anticipation of a civil action or proceeding.

Freedom of Information Act

- (b)(4) exempts trade secrets, commercial or financial information.
- (b)(5) exempts deliberative, attorney work product, attorney-client privilege

Exemptions

Privacy Act

- No similar exemptions.

Freedom of Information Act

- (b)(6) unwarranted invasion of personal privacy.
- (b)(8) stability reports (financial institutions).
- (b)(9) exempts geological data concerning wells.

Litigation

Privacy Act

- Judicial review for access, accuracy or amendment cases.
- Privacy right of action for violations.
  - Civil and criminal penalties.

Freedom of Information Act

- Judicial review after exhausting administrative remedies.
  - Denials or procedural matters.
  - Option for immediate judicial review in timeliness cases.
  - Attorney fees and litigation costs.

Processing under Privacy Act

- Ensure you have appropriate request.
  - First party or authorized representative.
  - Disclosure pursuant to a published routine use.
- Review system notice to determine if exemptions apply.
  - Properly published exemptions, except (d)(5) which is self executing.
- Continue to process under FOIA.
  - Records must contain both a PA exemption and FOIA exemption to be withheld.
- Provide appropriate appeal rights.

Processing under FOIA

- Any person.
- Reasonable description of records sought.
- Conduct a reasonable search for responsive records.
- Conduct a line-by-line review.
- Withhold segregable portions of otherwise releasable documents.
- Provide appropriate appeal rights.

Interface Scenario

- Marlon Monroe writes and asks for all records relating to him. Under which statute do we process and why?
- Records exist in a non-exempt Privacy Act system. Does he get access? Why or why not?
- Records exist in an exempt Privacy Act system. Does this change the result? Should the agency process under FOIA?

Interface Scenario

- After processing under both statutes, you determine that no exemptions apply. Does Mr. Monroe get access to the records?

- What happens when there is both an exemption under the Privacy Act and an exemption under the FOIA?

Rules in Responding

- Requester doesn’t always know which statute applies to his/her request.
- Review the threshold requirements of each statute in conjunction with the subject of the request.
- Once a decision is made on which statute(s) applies, follow your agency’s regulations.
- Know your agency’s published Privacy Act System of Records Notices.

PA/FOIA Toolkit

- Statutes:
  - Privacy Act – 5 U.S.C. 552a.
  - Freedom of Information Act – 5 U.S.C. 552.
- Published Privacy Act Systems of Records Notices
- Implementing regulations.
- Other agency issuances or procedural guidance concerning PA and FOIA.
- DOJ guidance:
  - http://www.justice.gov/opcl/1974privacyact-overview.html
  - http://www.justice.gov/oip/04_3.html
- OMB Privacy Act Guidance:
  - http://www.whitehouse.gov/omb/inforeg/infopooltech.html#prm